IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8470 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GENIUS COMPUTERS

Versus

REGIONAL PROVIDENT FUND COMMISSIONER (F & A)

Appearance:

1. Special Civil Application No. 8470 of 2004

MR H.S.MULIA for Petitioner No. 1-3

MR VIKRAMSINGH GOHIL for Petitioner No. 1-3

MR MS RAO for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/08/2004

ORAL JUDGEMENT

Rule. Mr.M.S.Rao waives service of notice of rule on behalf of the respondent. At the joint request

of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner is challenging the order dated 25.7.03 passed by the respondent No.2 in exercise of powers under section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act ("the said Act" for short) as well as the notice of demand dated 5.7.04 pursuant to the order of 27.7.03. It is the case of the petitioner that the order dated 25.7.03 came to be passed ex-parte since the petitioner, a partnership firm, was dissolved in the year 2002 and that therefore necessary instructions could not be given to the respondents. The learned advocate for the petitioner, therefore, requests that the mater may be remanded before the competent authority for fresh consideration after hearing the petitioner. He also submits that the petitioner has already paid its provident fund dues and that no amounts are outstanding. He, therefore, prays for remand of the matter without imposing any condition.

3. Learned advocate for the respondent, Shri Rao submits that the petitioner had not participated in the inquiry proceedings though the same were adjourned from time to time on number of occasions. He submits that though the petitioner may have paid substantial amount of PF from that ordered under order dated 25.7.03, the petitioner cannot escape the responsibility to appear before the authorities and participate in the proceedings. He submits that even if the matter is to be remanded, the petitioner be put to terms to ensure the presence and participation of the petitioner in the inquiry.

4. Considering the submissions made, I am of the opinion that the petitioner deserves one more opportunity to appear before the Assistant Provident Commissioner and put forth its case. Considering the fact that the petitioner has stated that the entire amount of provident fund has already been paid by the petitioner, as a special case and in the facts of the present petition, the matter is remanded without any condition of pre-deposit. The impugned order dated 25.7.03 is quashed and set aside and the matter is remanded to the Assistant Provident Fund Commissioner for fresh hearing and disposal in accordance with law. In view of the quashing of the order dated 25.7.03, subsequent notice of demand dated 5.7.04 also does not survive. In view of the fact that the matter is being remanded, I have refrained from airing any opinion about the merits and demerits of the

contentions raised in the petition. The petitioner is directed to co-operate with the inquiry proceedings and to appear before the Assistant Provident Fund Commissioner from time to time and in the event of failure on the part of the petitioner to co-operate, it will be open or the respondent to pass ex-parte orders in accordance with law. The petitioner is directed to pay cost of Rs.5,000/= to the respondent.

5. With these directions, the petition stands disposed of. Rule is made absolute to the above extent.

(Akil Kureshi, J.)
(vjn)